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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

SAN FRANCISCO BAYKEEPER; SAVE THE  
BAY; COMMITTEE FOR GREEN  
FOOTHILLS; CITIZENS' COMMITTEE TO  
COMPLETE THE REFUGE; and STATE OF  
CALIFORNIA, by and through XAVIER  
BECERRA, ATTORNEY GENERAL,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY AND ITS ADMINISTRATOR,

Defendants.

REDWOOD CITY PLANT SITE, LLC,

Intervenor-Defendant.

CASE NO: 3:19-cv-05941-WHA (lead case)

Consolidated with

No: 3:19-cv-05943-WHA

**STIPULATION RE: BRIEFING  
SCHEDULE FOR PLAINTIFFS' MOTION  
FOR ATTORNEYS' FEES AND COSTS  
AND [PROPOSED] ORDER**

Date: May 27, 2020

Time: 8:00 a.m.

Ctrm: 12

Judge: William H. Alsup

**STIPULATION RE: BRIEFING SCHEDULE FOR PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES AND COSTS; CASE NO. 3:19-cv-05941-WHA**

1 Plaintiffs San Francisco Baykeeper, Save The Bay, Green Foothills, and Citizens' Committee  
 2 To Complete The Refuge ("NGO Plaintiffs"), and Defendants U.S. Environmental Protection Agency  
 3 and its Administrator in his official capacity ("EPA") submit the following stipulation and proposed  
 4 order regarding the briefing schedule and procedure pertaining to NGO Plaintiffs' Motion for  
 5 Attorneys' Fees and Costs under the Equal Access to Justice Act ("EAJA") filed on April 2, 2021  
 6 ("fee motion") (Dkt. No. 94).

7 WHEREAS, on October 5, 2020, this Court issued its "Amended Order RE Motions for  
 8 Summary Judgment and Plaintiffs' Motion to Supplement Administrative Record" (Dkt. No. 84);

9 WHEREAS, on October 5, 2020, this Court entered a judgment in favor of plaintiffs (Dkt.  
 10 No. 83), ruling: "The March 2019 jurisdictional determination is VACATED AND SET ASIDE.  
 11 The matter is REMANDED to the agency to consider the question anew and do so in conformity with  
 12 the accompanying order";

13 WHEREAS, on December 2, 2020, EPA filed a notice of appeal (Dkt. No. 85);

14 WHEREAS, on December 3, 2020, Intervenor Redwood City Plant Site, LLC ("Cargill")  
 15 filed a notice of appeal (Dkt. No. 86);

16 WHEREAS, on February 26, 2021, in Ninth Circuit Appeal No. 20-17359, EPA filed an  
 17 unopposed motion to voluntarily dismiss its appeal;

18 WHEREAS, on March 3, 2021, the Ninth Circuit granted EPA's voluntary dismissal and  
 19 issued its mandate (Dkt. No. 93);

20 WHEREAS, to date, Cargill's appeal (Ninth Circuit Appeal No. 20-17367), remains pending;

21 WHEREAS, to avoid any potential jurisdictional deficiency with their fee motion, NGO  
 22 Plaintiffs filed their motion on April 2, 2021, 30 days after the Ninth Circuit granted EPA's motion to  
 23 dismiss its appeal and issued its mandate, *see* 28 U.S.C. § 2412(d)(1)(B), (d)(2)(G);

24 WHEREAS, NGO Plaintiffs noticed the hearing on their motion for May 27, 2021;

25 WHEREAS, EPA and NGO Plaintiffs agree that this Court's resolution of the fee motion  
 26 should be postponed until after Cargill's appeal is resolved;

27 WHEREAS, this stipulation and proposed order, if granted, would allow time for EPA and  
 28 NGO Plaintiffs to attempt to negotiate a settlement of NGO Plaintiffs' fee motion after Cargill's

**STIPULATION RE: BRIEFING SCHEDULE FOR PLAINTIFFS' MOTION FOR  
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1 appeal is resolved without further time and expense related to the motion, including, but not limited  
 2 to, expert witness expenses, opposition and reply briefing related to the motion, and to avoid the  
 3 uncertainty of potential outcomes related to the motion;

4 WHEREAS, if the parties are unable to reach a settlement of the fee motion, nothing about  
 5 this stipulation and proposed order waives any argument any party has made or may advance  
 6 regarding the fee motion, except that the parties agree that NGO Plaintiffs have preserved any  
 7 applicable filing deadline of April 2, 2021, even though NGO Plaintiffs may later supplement their  
 8 fee motion after Cargill's appeal is resolved (as provided for in this stipulation and proposed order);

9 THEREFORE, NGO Plaintiffs and EPA stipulate and propose for the Court's approval the  
 10 following:

- 11 1. The hearing date for NGO Plaintiffs' fee Motion (Dkt. No. 94) shall be taken off calendar  
 12 and shall be reset by the parties after a mandate issues on Cargill's appeal;
- 13 2. The parties will file a notice with this Court upon the conclusion of Cargill's appeal, in  
 14 which NGO Plaintiffs and EPA shall propose a briefing schedule consistent with this  
 15 stipulation and proposed order;
- 16 3. Although the precise due date is not yet ascertainable (because resolution of Cargill's  
 17 appeal remains pending), NGO Plaintiffs may supplement their fee motion to provide  
 18 expert declaration(s) in support of their motion for attorneys' fees, if any, no more than 28  
 19 days of a mandate being issued by the Ninth Circuit Court of Appeals on Cargill's appeal  
 20 (absent a further extension of time);
- 21 4. Similarly, although the due date is not yet ascertainable, EPA's response to the fee motion  
 22 shall be due no more than 73 days after a mandate being issued by the Ninth Circuit Court  
 23 of Appeals on Cargill's appeal (absent a further extension of time);
- 24 5. NGO Plaintiffs' reply brief in support of their fee motion shall be due no more than 14  
 25 days after EPA's opposition is filed (absent a further extension of time); and
- 26 6. This stipulation and proposed order does not address size limitations; the parties preserve  
 27 their rights to seek leave to file an oversized brief (after meeting and conferring with one  
 28 another).

1 It is so stipulated.

2 Dated: April 7, 2021

3 **COTCHETT, PITRE & McCARTHY, LLP**

4 By: /s/ Eric J. Buescher

5 JOSEPH W. COTCHETT  
6 ERIC J. BUESCHER  
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8 *Attorneys for Plaintiffs Save The Bay, Green Foothills, and Citizens' Committee to Complete the*  
9 *Refuge*

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11 By: /s/ Allison M. LaPlante

12 ALLISON M. LAPLANTE  
13 JAMES N. SAUL

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15 **SAN FRANCISCO BAYKEEPER, INC.**

16 NICOLE C. SASAKI

17 *Attorneys for Plaintiff San Francisco Baykeeper*

18 Dated: April 7, 2021

19 By: /s/ Andrew J. Doyle

20 U.S. Department of Justice  
21 Environment & Natural Resources Division  
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26 *Attorney for Defendants U.S. EPA and its Administrator in his official capacity*

**PROPOSED ORDER**

Pursuant to the stipulation of the parties, it is so ordered. NGO Plaintiffs and EPA shall file a notice within 10 days of the Ninth Circuit's issuance of a mandate in Cargill's appeal; the notice shall contain precise briefing deadlines and a hearing date respecting NGO Plaintiffs' fee motion. All further proceedings in this case are held in abeyance pending the filing of the notice.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Judge William H. Alsup